



**Republic v Lowakub (Criminal Case 22 of 2020)  
[2023] KEHC 21534 (KLR) (16 August 2023) (Sentence)**

Neutral citation: [2023] KEHC 21534 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 22 OF 2020  
EM MURIITHI, J  
AUGUST 16, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**LEKUTOK LOWAKUB ..... ACCUSED**

**SENTENCE**

1. The accused was convicted on his own plea of guilty for manslaughter contrary to section 202 as read with 205 of the [Penal Code](#) following a plea bargaining agreement, the facts of the case of which were set out in paragraphs 9-15 as follows:

**3. Factual Basis of Offence(s) Charged**

9. The facts are that on the 1<sup>st</sup> day of April, 2020 the accused and the deceased were drinking together from around 12pm at the accused persons manyatta. While drinking the deceased intimated to the accused person, he was going to kill him.

They were drinking together with a third person by the name of Lelelit. Lelelit told the accused that they had enough of the drinks and both left leaving deceased at the accused persons manyatta. At around 1800 hours the deceased, one Kanyato Lowakub left to go to his house and went to assist the children in bringing in the cattle since they were coming back from grazing. The cattle belonging to the deceased and the accused normally grazed together. The deceased met with the accused persons son who had come back from grazing and that is when the deceased took charge of the cattle.

10. The deceased and the accused are brothers and they reside in different manyattas which are 100 metres apart.



11. The deceased then took the cattle to where his manyatta was and separated his cattle from the accused. When the accused came back to look for his cattle he found them at the deceased manyatta he question him as to his attention.
  12. The deceased then told the accused that he was looking for him and not the cattle. The deceased thereafter started canning the accused cattle. The accused then asked the deceased the reason as to why he was canning his cattle and where he was taking them to the deceased then told the accused that he was taking the accused cattle to their late father.
  13. The canning of the cattle by the deceased irritated the accused. The deceased and the accused starting abusing each other. The deceased and the accused began arguing and fighting. The deceased drew a knife and cut the accused second finger n his left hand and broke the fifth finger. He then told the accused that he will cut his neck. The abuses led to a physical fight. The deceased started beating the accused using his Samburu rungu which led to the accused falling down. The deceased got hold of the accused neck and used his knife to cut the deceased on the head and shoulder.
  14. The accused managed to push the deceased and that is when he got hold of his knife and when the deceased charged towards him, the accused stabbed the deceased on the right thigh. The deceased fell down and started bleeding. Wives to both the deceased and accused were unable to separate them and screamed for help.
  15. While Thomas Letarkush was performing his normal duties, he heard people screaming about one kilometer from his house and he then decided to proceed to where the screams were coming from. Thomas Letarkush then drove his motor vehicle registration. Number KBL979N and when he got to the scene to assist take the deceased to hospital unfortunately the deceased had already succumbed to his injuries and died.”
2. The accused and the deceased were brothers and they were both drunk when they got in a fight lading to the killing of the deceased, and a pre-sentence report by the probation office filed on 27/6/2023 has recommended a probation sentence as follows:

“Conclusion

The offender readily admits the offence and he is very remorseful about the same. The Offender and the deceased person are blood brothers and there is no known enmity between the two prior to the committal of the offence. On his part, the offender blames alcohol for this crime and remorsefully prays for leniency. He prays that this honourable court consider releasing him on a non-custodial sentence so that he can fast track reconciliation with the victim’s immediate family (wife and children). ON the other hand the deceased person’s wife, her children and other relatives are still living in the same village (Murgur) where the incident occurred and have since accepted his demise. They appear relaxed with no vengeance attitude or bitterness.

Recommendation

Your Lordship, going by the fact that the offender is remorseful and that he is not a threat to the community, I recommend that he be considered for probation sentence. Our office will



work in close liaison with relatives, village elders and area chief to assist in the reconciliation and reintegration process.

Alice Mugambi

Probation Officer, Meru”

### **Mitigation**

3. In mitigation, Counsel for the accused states that the accused has 8 school children and for their upkeep seeks a noncustodial sentence. She puts forward the hospital Discharge Summary on the accused indicating that he had been injured by his brother during he fight. The accused himself pleaded for leniency pointing that he was desperate having lost all his cattle and goats in the dry season during his incarceration.
4. The DPP urged a custodial sentence pointing to the injury that eh deceased sustained –  

“Because of eh injury which he sustained the court should interpret that he should not suffer life imprisonment. It should not be interpreted to mean that a non-custodial sentence should n=be meted out. It would be setting a wrong precedent that it is okay to kill your sibling and your dong that can be granted a non-custodial sentence. The deceased who was his brother also had a family with wife and children. From the plea bargain agreement, he accused was intoxicated. But that is not to say that he did not know what was right or what was wrong. There were other ways of settling the dispute he had with the deceased.”

### **Appropriate sentence**

5. The court is unable to accept the recommendation of a probation sentence in the matter as it considers that the circumstances of killing in a fight while drunk, and its noted prevalence, requires a deterrent sentence even though one that reflects the diminished responsibility occasioned by drink impaired mental faculty.
6. I should agree with both the presentence report and the prosecution that it is an appropriate objective in this case to seek re-integration of the accused into his society. I also particularly agree with the prosecution in the submission that the accused may be reintegrated “upon him serving a custodial sentence as opposed to the community to see that nothing has happened to him for the life which has been lost. The aggravating circumstances outweigh the mitigating circumstances in this case.”
7. I have considered the accused’s sole breadwinner burden for his large family. I have also considered that the circumstances of the killing in a drunken fight in which he too suffered notable injuries diminishes the responsibility and blame-worthiness of the accused.
8. However, prevalent drink-driven unlawful killing is to be deterred by severe sentence in circumstances of prison custody which permit discipline, correction and acquisition of trades, skills and lifestyle conducive to the rehabilitation of the offender into his Society. At the age of 43, a sentence of imprisonment for seven (7) years still allows his correction, reform and preparation for the accused’s reintegration into Society at the socially productive age of 50 years.

### **Orders**

9. Accordingly, having convicted the accused Lekutok Lowab on his own plea of guilty for the offence manslaughter c/s 202 as read with 205 of the [\*Penal Code\*](#), the Court now sentences him an imprisonment for seven (7) years.



10. Pursuant to section 333 (2) of the *Criminal Procedure Code*, the sentence of seven years shall commence on April 16, 2020 when the accused was remanded to await his trial.

Order accordingly.

**DATED AND DELIVERED ON THIS 16<sup>TH</sup> DAY OF AUGUST, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr, Masila for DPP.

Ms. Thuo for Accused.

